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6 BEFORE THE WASHINGTON STATE
7 OFFICE OF THE INSURANCE COMMISSIONER
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9 In the Matter of the Application regarding the
10 Conversion and Acquisition of Control of
Premera Blue Cross and its Affiliates,

No. G02-45

DECLARATION OF ELEANOR
HAMBURGER

12 Washington Citizen Action, Welfare Rights
13 Organizing Coalition, American Lung
14 Association of Washington, Northwest
15 Federation of Community Organizations,
16 Northwest Health Law Advocates, Service
17 Employees International Union Washington
State Council, The Children's Alliance,
Washington Academy of Family Physicians,
Washington Association of Churches,
Washington Protection and Advocacy System
and Washington State NOW,

18 Washington State Medical Association,

19 Washington State Hospital Association, and
20 Association of Washington State Public
Hospital Districts

21 Applicants for Intervention.
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DECLARATION OF ELEANOR HAMBURGER

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1 I, Eleanor Hamburger, declare:

- 2 1. I am co-counsel for the Welfare Rights Organizing Coalition (WROC), one of the
3 Applicant-Intervenors.
- 4 2. I have obtained copies of all of the charter documents for Premera, Premera Blue
5 Cross and their main predecessor corporations, the Medical Services Corporation of
6 Eastern Washington and Blue Cross of Washington and Alaska, from the Washington
7 Secretary of State's office.
- 8 3. I have reviewed the charter documents in order to better understand Premera's
9 obligation to transfer the nonprofit assets it holds to another nonprofit upon its
10 conversion to a for-profit corporation.
- 11 4. According to the charter documents, in 1933, the Medical Services Corporation of
12 Spokane County, the first predecessor corporation to Premera, was formed under
13 Section 3863 of the Remington's Compiled Statutes of Washington, the designation
14 for educational, religious, social and charitable corporations and associations.
15 Attached as Exhibit 1 is a true and correct copy of the Initial Articles of Incorporation
16 of Medical Service Corporation of Spokane County.
- 17 5. In its founding documents, the Medical Service Corporation pledged that its purposes
18 would include:
 - 19 (a) To secure to low wage earners and to their families, health service,
20 including the benefits of medical and surgical care and treatment, hospitalization
21 and nursing of which many of such individuals and their families have heretofore
22 been deprived...
 - 23 (g) To conduct and operate the business of his corporation so that the same
shall be self-sustaining, but this corporation shall have the privilege of furnishing

1 its services without pay to needy and deserving individuals and to provide for
2 charitable help to them.

3 (h) This corporation shall have the power to receive donations and
4 contributions from whatsoever source...

5 (i) All of the income and property of this corporation shall be applied solely
6 to carrying out the foregoing purposes...The entire receipts, income, funds and
7 property of this corporation shall become and remain its sole property; no member
8 or officer of the corporation has any right, title, interest or estate in or to the
9 property of the corporation except in a fiduciary capacity, nor shall any donor or
10 contributor to this corporation, not any other persons ever have any right title
11 interest or estate in or to any of its profits, income or property except as a
12 reasonable payment for property or services furnished to the corporation, except
13 as above provided in paragraph "g"; the entire property of said corporation shall
14 be devoted and applied solely to its support, maintenance and/or the enlargement
15 of its facilities after payment of its expenses, except as above provided in
16 paragraph "g".

17 Exhibit 1, Article 3.

- 18 6. In 1959, the Medical Service Corporation amended its Articles of Incorporation to
19 broaden its purposes to include all wage earners, not just low-wage earners. Attached
20 as Exhibit 2 is a true and correct copy of the Medical Service Corporation of Spokane
21 County Articles of Amendment to Articles of Incorporation dated February 2, 1959.
- 22 7. The purposes of the Medical Service Corporation remained largely unchanged until
23 the corporation was merged into Blue Cross of Washington and Alaska in 1998
(although the Kittitas County Medical Service Corporation merged into the
corporation in 1984). Attached as Exhibit 3 is a true and correct copy of the Articles
of Merger to Blue Cross of Washington and Alaska dated June 30, 1998. At that
time, the Medical Service Corporation's long-standing charitable purposes, mission

1 and dedication to assisting wage earners to have access to health coverage in (a), (g),
2 (h) and (i) was eliminated from the Articles of Incorporation. Id.

- 3 8. The Washington Hospital Service Association, Premera's other predecessor
4 corporation, was founded as a nonprofit social welfare organization under
5 Remington's Revised Statutes Section 3888 to 3900. Corporations formed under this
6 section could carry out any lawful purposes except "the carrying on a business, trade,
7 avocation or profession for profit." Section 3888.
- 8 9. In 1945, the Washington Hospital Service Association was formed to "establish,
9 maintain and operate, with no individual being entitled to any of the net income
10 thereof, a nonprofit hospital service plan, whereby hospital care shall be provided to
11 persons who become subscribers to the plan of the corporation...[and] to promote the
12 general and social welfare of such persons as may become subscribers of the plan..."
13 Attached as Exhibit 4 is a true and correct copy of the initial Articles of Incorporation
14 of Washington Hospital Service Association dated May 9, 1945.
- 15 10. Over time, the corporation's Articles were amended to broaden its purpose to include
16 the general social welfare. Attached as Exhibit 5 is a true and correct copy of the
17 Amended Articles of Incorporation of Blue Cross Washington-Alaska, Inc. dated
18 April 11, 1978. At this same time, a dissolution clause was added to the Articles of
19 Incorporation, which stated that "No part of the net income of the corporation shall
20 ever be distributable to any member, director, or officer nor shall any dividends ever
21 be paid. On dissolution or final liquidation of the corporation, its net assets shall be
22 distributed as set forth in the bylaws." Id.
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- 1 11. The dissolution provision remained in the company's Articles of Incorporation until
2 1994, when both the Medical Service Corporation and Blue Cross of Washington-
3 Alaska (formerly known as the Washington Hospital Service Association) created
4 Premera and made it the sole member of both nonprofits. At that time, Blue Cross of
5 Washington-Alaska changed its dissolution clause to require the distribution of assets
6 to Premera, upon the winding up of its affairs. Attached as Exhibit 6 is a true and
7 correct copy of the Certificate of Amendment dated November 21, 1994.
- 8 12. Since its creation, Premera, the nonprofit parent to both Blue Cross of Washington
9 and Alaska and the Medical Service Corporation, has maintained a dissolution clause
10 that requires that transfer of all of its nonprofit assets to another nonprofit dedicated
11 to similar health purposes, in the event of its dissolution. Attached as Exhibit 7 is a
12 true and correct copy of the Certificate of Incorporation to Premera, dated November
13 21, 1994.
- 14 13. Based upon my review of the charter documents, I believe that, upon conversion, all
15 of Premera's assets must be transferred to another similar health care nonprofit, in
16 accordance with its current Articles of Incorporation. I also believe that the historic
17 dedication of the nonprofit assets held by Premera to health care purposes requires
18 that any nonprofit corporation that receives the proceeds from the conversion focus,
19 at least in part, on access to health coverage for those who would otherwise be
20 deprived of coverage, such as is described in the Articles of Incorporation for the
21 Medical Services Corporation of Spokane County. Accordingly, the Applicant-
22 Intervenors, and the members and constituencies that they represent are either
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1 beneficiaries, or at least, potential beneficiaries of the nonprofit assets held by
2 Premera and to be transferred to a foundation in the event of a conversion.

3 14. As part of my research regarding health care conversion issues nationally, I have
4 spoken with Walter Smith, Executive Director of the DC Appleseed Center for Law
5 and Justice, which has been granted full party status in the adjudicative hearing before
6 the District of Columbia Department of Insurance and Securities Regulation
7 regarding the proposed conversion of Carefirst, the Blue Cross and Blue Shield
8 licensee in Washington DC, Maryland and Delaware. Mr. Smith's office provided
9 me with a copy of the Insurance Commissioner's order admitting DC Appleseed as a
10 full party in the Carefirst conversion adjudicative hearing. Attached as Exhibit 8 is a
11 true and correct copy of the Order.

12 15. I have also received a copy of the Order on Intervention in the Matter of the
13 Acquisition of Control of New Mexico Blue Cross and Blue Shield, Inc., and HMO
14 New Mexico, Inc., by Health Care Service Corporation, Docket No. 00-256-IN,
15 relating to the conversion of New Mexico Blue Cross and Blue Shield. In that
16 adjudicative proceeding, the Coalition to Save Our Health Resources, a coalition of
17 21 consumer organizations, was granted full participation rights. Attached as Exhibit
18 9 is a true and correct copy of the Order.

19 16. On behalf of the Applicant-Intervenors, I have obtained verbal commitments for
20 sufficient funding to conduct a health impact evaluation. I am working with a
21 subcommittee of the Applicant-Intervenors to raise additional funding in order to
22 ensure the fullest review of the potential health impact of the Premera conversion on
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1 Washington residents, as well as the availability of other experts to assist the
2 Applicant-Intervenors in their review of the proposed transaction. I anticipate that the
3 Applicant-Intervenors will be able to finalize their selection of appropriate experts to
4 conduct the health impact evaluation within the next few weeks.

5 17. Together with the other attorneys representing the Applicant-Intervenors, I have been
6 in touch with potential experts on nonprofit corporation and tax issues and health care
7 conversions generally. I anticipate that the Applicant-Intervenors will be able to
8 decide quickly what additional expert testimony we will present, if granted full
9 intervenor status. Applicant-Intervenors plan to evaluate Premera's Form A filing
10 and related documents, depositions and submitted testimony by Premera employees
11 and consultants, reports and testimony by OIC consultants, and the relevant valuation,
12 securities issues, nonprofit corporation and tax issues, philanthropic formation and
13 foundation issues, among others, as part of its intervention in the proposed Premera
14 conversion.

15 I certify and declare under penalty of perjury under the laws of the State of Washington
16 that the foregoing is true and correct.

17 DATED this 25th day of November, 2002 in Seattle, Washington.

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20 ELEANOR HAMBURGER, WSBA No. 26478
21 Of Attorneys for Applicant-Intervenor Welfare Rights
22 Organizing Coalition
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